

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KOKANEE RIVER TRANSFORM LLC;
CAROLINE GRAY; and ANDREW
WALLACE ,

Plaintiffs,

vs.

SAFECO INSURANCE COMPANY OF
AMERICA,

Defendant.

No. 2:18-cv-00221

NOTICE OF REMOVAL

TO: Clerk, U.S. District Court for the Western District of Washington;

AND TO: Plaintiffs, by and through their attorney of record, Lawrence B. Linville.

PLEASE TAKE NOTICE that Defendant Safeco Insurance Company of America
("Safeco") hereby removes to this Court the state court action described below on the grounds
stated herein.

//

//

I. INTRODUCTION

On or about December 24, 2017, plaintiffs Kokanee River Transform LLC and its purported owners, Caroline Gray and Andrew Wallace, commenced a lawsuit in King County Superior Court titled *Kokanee River Transform LLC; Caroline Gray and Andrew Wallace v. Safeco Insurance Company of America*, Cause No. 18-2-00250-8 (“Complaint”). Plaintiffs allege causes of action for: (i) violation of RCW 48.30.015 “and other laws”, (ii) breach of the obligation of good faith and fair dealing under RCW 48.01.010 and WAC 284-30 *et seq.*, and (iii) negligent investigation and handling of claims and damages. Plaintiffs allege Safeco is estopped from denying coverage to plaintiffs because of its breach of contractual obligations, bad faith, and breach of fiduciary obligations to plaintiffs. Plaintiffs request that the court enter judgment in an amount to be determined at trial, together with taxable costs, prejudgment interest, and reasonable attorney fees. *See* Exhibit A.

On or about January 11, 2018, the Insurance Commissioner of the State of Washington accepted service of plaintiffs’ Summons and Complaint. *See* Exhibit B.

Safeco is incorporated in the State of New Hampshire and has its principal place of business in the State of Massachusetts. Plaintiffs are Washington residents and claim damages in excess of \$75,000. Diversity exists and is a proper ground for removal to federal court.

II. BASIS FOR REMOVAL

A. Complete Diversity of Citizenship Exists Under 28 U.S.C. §1332

This case is a civil action for which this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a)(1). It can be removed to this Court by defendant pursuant to 28 U.S.C. §1441(a) and (b) in that it is a civil action between citizens of different states and the amount in controversy based upon plaintiffs’ causes of action and damages described exceeds \$75,000.

1 Plaintiffs are citizens of the State of Washington. *See* Exh. A, ¶ 1.1-1.2. Safeco is
 2 incorporated in the State of New Hampshire and has its principal place of business in the State
 3 of Massachusetts. There is complete diversity of citizenship between the parties pursuant to 28
 4 U.S.C. §1332, and there was complete diversity at the time plaintiff's lawsuit was filed.

5 **B. The Amount In Controversy Exceeds the Jurisdictional Minimum**

6 Plaintiffs allege causes of action for: (i) violation of RCW 48.30.015 "and other laws",
 7 (ii) breach of the obligation of good faith and fair dealing, and (iii) negligent investigation and
 8 handling of claims and damages. Plaintiffs claim Safeco is estopped from denying coverage to
 9 plaintiffs because of its breach of contractual obligations, bad faith, and breach of fiduciary
 10 obligations to plaintiffs. Safeco disputes and denies plaintiffs' causes of action and claimed
 11 remedies / damages.

12 Plaintiffs' Complaint does not allege an amount sought in the litigation. Plaintiffs allege
 13 that on July 7, 2016, they suffered water damage to their property located at 1815 E. Thomas
 14 Street, Seattle, Washington ("the Property"). *See* Exh. A ¶ 3.1. Plaintiffs allege the Property
 15 sustained property damage in the amount of \$242,176.82. They claim they submitted a claim
 16 to Safeco for that amount, and that Safeco partially paid plaintiffs in the amount of \$18,599.56.
 17 *Id.* at ¶¶ 3.2-3.4. Plaintiffs allege Safeco is obligated under the terms of the subject Safeco
 18 policy to fully compensate plaintiffs for the costs of repair, restoration and/or replacement of
 19 damage to the Property, together with compensation for plaintiffs' loss of use of the Property.

20 Attorney's fees and treble damages, when provided by statute, may be included in
 21 calculating the amount in controversy requirement. *Egal v Gen. Ins. Co.*, 2015 WL 1632950 *3
 22 (W.D. Wash. April 13, 2015); *see Lowdermilk v. U.S. Bank Nat. Ass'n*, 479 F.3d 994, 1000 (9th
 23

1 Cir. 2007); *Kerbs v. Safeco Ins. Co. of Ill., Inc.*, 2011 WL 6012497 (W.D. Wash. 2011). Under
 2 IFCA, RCW 48.30.015, the court may award damages up to three times the actual damages.

3 Plaintiffs allege—*inter alia*—that Safeco’s actions are in violation of the Washington
 4 Insurance Fair Conduct Act (IFCA), RCW 48.30.015. *See* Exh. A ¶ 3.7. The difference
 5 between plaintiffs’ claim and Safeco’s alleged partial payment is \$223,577.26 (i.e.,
 6 \$242,176.82 less \$18,599.56). This alone exceeds the \$75,000 threshold for the purposes of
 7 diversity jurisdiction. Under IFCA, three times \$223,577.26 is \$670,731.78 (this does not take
 8 into account the additional relief—taxable costs, prejudgment interest, and reasonable attorney
 9 fees—sought by plaintiffs). Therefore, the amount in controversy exceeds the minimum
 10 jurisdictional amount of \$75,000 set forth in 28 U.S.C. § 1332(a).

11 **C. This Notice of Removal Is Timely Under 28 U.S.C. §1446(b)**

12 This Notice of Removal was filed on February 12, 2018. This is within 30 days of
 13 receipt of plaintiff’s Summons and Complaint by Safeco [via Office of the Insurance
 14 Commissioner] on or about January 11, 2018. *See* Exhibit B. This notice is filed in compliance
 15 with 28 U.S.C. §1446(b).

16 **D. This Notice of Removal Complies With the Applicable Local Rules and Venue Is**
 17 **Proper in the Eastern District of Washington Under 28 U.S.C. §128(a)**

18 This Notice of Removal complies with all applicable Federal Rules of Civil Procedure
 19 and local rules. Safeco has attached to this notice copies of all process, pleadings, and orders
 20 served upon it in the state court action as required by 28 U.S.C. §1446. *See* Exhibits A and B.

21 Venue is proper in this District pursuant to 28 U.S.C. §§ 128(a) and 1441(a) because
 22 this District encompasses King County in which plaintiffs filed the state court action that is the
 23 subject of removal.

1 Safeco is serving plaintiffs' counsel with copies of this Notice of Removal with
2 exhibits. Safeco is also promptly filing with the Clerk of the King County Superior Court of the
3 State of Washington a copy of this Notice of Removal, along with a notice to Superior Court of
4 filing the Notice of Removal. Removal of this case to the United States District Court for the
5 Western District of Washington is therefore proper.

6 RESPECTFULLY SUBMITTED this 12th day of February, 2018.

7
8 FORSBERG & UMLAUF, P.S.

9 By: s/ Matthew S. Adams
Matthew S. Adams, WSBA #18820

10 By: s/ Miles J. M. Stewart
11 Miles J. M. Stewart, WSBA #46067

12 FORSBERG & UMLAUF, P.S.
13 901 Fifth Avenue, Suite 1400
Seattle, WA 98164-1039
14 Tel: 206-689-8500
Fax: 206-689-8501
15 E-mail: MAdams@FoUm.law
E-mail: MStewart@FoUm.law
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing NOTICE OF REMOVAL on the following individuals in the manner indicated:

Mr. Lawrence B. Linville
Linville Law Firm, PLLC
800 Fifth Ave., Suite 3850
Seattle, WA 98104-3101
(X) Via ECF

SIGNED this 12th day of February, 2018, at Seattle, Washington.

s/ Honor M. McQueen
Honor M. McQueen